

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**GUIDELINES FOR TRIAL AND FINAL PRETRIAL CONFERENCE
IN CIVIL BENCH CASES
BEFORE THE HONORABLE CHARLES R. BREYER
FINAL PRETRIAL CONFERENCE**

1. Please do not prepare a joint pretrial conference statement. Nor should counsel invest time on deposition designations or extracts from interrogatories or requests for admissions at the pretrial conference stage. Instead, please file SEVEN calendar days in advance of the final pretrial conference the following:

(a) In lieu of preparing a joint pretrial conference statement, the parties shall meet and confer and prepare a joint proposed final pretrial order that contains: (i) a brief description of the substance of claims and defenses which remain to be decided, (ii) a statement of all relief sought, (iii) all stipulated facts, (iv) a list of all factual issues which remain to be tried, (v) a joint exhibit list in numerical order, including a brief description of the exhibit, a column for when it is offered in evidence, a column for when it is received in evidence, and a column for any limitations on its use, and (vi) each party's separate witness list for its case-in-chief witnesses (including those appearing by deposition) providing, for all such witnesses other than an individual plaintiff and an individual defendant, a short statement of the substance of his/her testimony and, separately, what, if any, non-cumulative testimony the witness will give. If non-cumulative testimony is not spelled out, then the Court will presume the witness is cumulative. For each witness, state an hour/minute time estimate for the direct examination (only). Items (v) and (vi) should be appendices to the proposed order. The objective is to convert the proposed order to a final order with the benefit of any discussion at the final pretrial conference.

(b) Each side's proposed findings of fact and conclusions of law.

(c) Each side's trial brief.

(d) Any motion *in limine*, with the opposition, filed as follows: At least TWENTY calendar days before the conference, serve, but do not file, the moving papers. At least TEN calendar days before the

3. At the final pretrial conference, the above submissions shall be considered and argued. The parties must take notes on rulings and submit a joint summary of all rulings in proposed order format.

4. Should a daily transcript and/or real-time reporting be desired, the parties shall make arrangements with Robert Stuart, Supervisor of the Court Reporting Services, at (415) 522-2079, at least ten calendar days prior to the trial date.

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1 projectors, have a spare bulb. Tape extension cords to the carpet for safety. Please take down and store
2 the equipment (in the courtroom) at the end of each court day. Please work with Barbara Espinoza (415-
3 522-2062) on courtroom-layout issues.

4 **SCHEDULING**

5 6. The normal trial schedule will be 8:30 a.m. to 1:30 p.m. (or slightly longer to finish a witness)
6 with two fifteen-minute breaks and ending before lunch. For bench trials, counsel must arrive by 8:15 a.m.,
7 or earlier as needed for any matters to be heard before the evidence begins. If an afternoon trial schedule is
8 scheduled, it will run from 2:00 p.m. to 5:30 p.m. (or slightly longer) with two fifteen-minute breaks. The
9 trial week is Monday through Thursday except for any Wednesday afternoon and all federal court holidays.

10 **OPENING STATEMENTS**

11 7. If openings are permitted, each side will have a predetermined time limit for its opening
12 statement. Counsel must cooperate and meet and confer to exchange any visuals, graphics or exhibits to be
13 used in the opening statements, allowing for time to work out objections and any reasonable revisions.

14 **WITNESSES**

15 8. Throughout the trial, all counsel are entitled to know a firm order of witnesses for the next two
16 full court days and the exhibits that will be used on direct examination (other than for impeachment of an
17 adverse witness). Within 24 hours of such notice, all other counsel shall provide any objections to such
18 exhibits and shall provide a list of all exhibits to be used with the same witness on cross-examination (other
19 than for impeachment). This requires that the first such notice be provided before trial actually begins. All
20 such notice should be provided in writing.

21 9. Always have your next witness ready and in the courthouse. Failure to have the next witness
22 ready or to be prepared to proceed with the evidence will usually constitute resting. If counsel plans to read
23 in a transcript of a deposition anyway, it is advisable to have a deposition prepared and vetted early on to
24 read just in case.

25 10. A witness or exhibit not listed in the joint pretrial statement may not be used without good
26 cause. This rule does not apply to rebuttal witnesses (other than experts).

27 11. When there are multiple parties, counsel are responsible for coordination of
28 the cross-examination to avoid duplication.

1 12. Stand at or near the podium to ask questions, straying only to point out material on charts or
2 overheads. Please request permission to approach the witness or the bench.

3 13. On the first day of trial, be sure to bring the original and clean copies of any
4 deposition(s) for which you are responsible. Any corrections must be readily available. If
5 you are likely to need to use the deposition during a witness examination, then give the
6 Court and the witness a copy with any corrections at the outset of the examination.

7 14. In lieu of direct testimony, the Court will consider receiving “prepared direct”
8 testimony in the form of declarations. When the witness is presented, the proponent must
9 verbally summarize the direct. Live cross-examination and redirect shall then occur.

10 **DEPOSITION DESIGNATION**

11 15. The following procedure applies only to witnesses who appear by deposition. It does not apply
12 to live witnesses whose depositions are read in while they are on the stand. To save time and avoid
13 unnecessary work, it is not necessary to make all deposition designations before trial. Instead, the following
14 steps should be followed.

15 (a) To designate deposition testimony, photocopy the cover page, the page where the witness is
16 sworn, and then each page from which any testimony is proffered. Line through or x-out any portions of
17 such pages not proffered. Also, line through objections or colloquy unless they are needed to understand
18 the question. Please make sure any corrections are interlineated and that references to exhibit numbers are
19 conformed to the trial numbers. Such interlineations should be done by hand. The finished packet should
20 then be the actual script and should smoothly present the identification and
21 swearing of the witness and testimony desired. The packet should be provided to all other parties at least
22 five calendar days before it will be used in court. For the rare case of voluminous designations, more lead
23 time will be required. Please be reasonable.

24 (b) All other parties must then promptly review the packet and highlight in yellow any passages
25 objected to and write in the margin the legal basis for the objections. If any completeness objection is
26 made, the objecting party must insert into the packet the additional passages as needed to cure the
27 completeness objection. A completeness objection should normally be made only if a few extra lines will
28 cure the problem. Such additions shall be highlighted in blue and an explanation for the inclusion shall be

1 legibly handwritten in the margin. Please line out or x-out any irrelevant portions of
2 the additional pages.

3 (c) The packets, as adjusted, must then be returned to the proffering party, who must then decide
4 the extent to which to accept the adjustments. The parties must meet and confer as reasonable. Counsel
5 forth proffering party must collate and assemble a final packet that covers the proffer and all remaining
6 issues. At least two calendar days before the proffer will be used, the proponent must provide the Court
7 with the final packet, with any objected-to portions highlighted and annotated as described above. If
8 exhibits are needed to resolve the objections, include copies and highlight and
9 tag the relevant passages. Alert the Court on the record that the packet is being provided and whether any
10 rulings are needed. If so, the Court will then read the packet and indicate its rulings in the margin in a
11 distinctive manner. Ordinarily, argument will not be needed.

12 (d) Counter designations must be made by providing a packet with the counter-designated
13 passages to the proponent at the same time any objections to the original proffer are returned to the first
14 proffering party, who must then supply its objections in the same manner.

15 (e) When the packet is read in court, the examiner reads the questions (and any relevant colloquy)
16 from the lectern and a colleague sits in the witness stand and reads the answers. When a video-taped
17 deposition is to be played instead, the packets must still be prepared, as above, in order to facilitate rulings
18 on objections. The video should omit any dead time, long pauses, and objections/colloquy not necessary to
19 understand the answers. The Court may decide, instead, to take the designations under submission and
20 simply read them.

21 **REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

22 16. Please designate responses to requests for admissions and interrogatory
23 answers in the same manner and under the same timetable as depositions.

24 **EXHIBITS**

25 17. Prior to the final pretrial conference, counsel must meet and confer in person
26 over all exhibit numbers and objections and to weed out duplicate exhibits. Please be
27 reasonable.

28 18. Use numbers only, not letters, for exhibits, preferably the same numbers as were used in

depositions. Blocks of numbers should be assigned to fit the need of the case (*e.g.*, Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.). A single exhibit should be marked only once. If the plaintiff has marked an exhibit, then the defendant should not re-mark it. Different versions of the same document, *e.g.*, a copy with additional handwriting, must be treated as different exhibits. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. _____,” not as “Plaintiff’s Exhibit” or “Defendant’s Exhibit.” If an exhibit number differs from that used in a deposition transcript, however, then the latter must be conformed to the new trial number if and when the deposition testimony is used (so as to avoid confusion over exhibit numbers).

19. The exhibit tag shall be in the following form:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
TRIAL EXHIBIT 100
CASE NO. _____
DATE ENTERED _____
BY _____
DEPUTY CLERK

Counsel preferably will make the tag up in a color that will stand out (yet still allow for photocopying) but that is not essential. Place the tag on or near the lower right-hand corner or, if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. Deposit your exhibits with the deputy clerk (Barbara Espinoza) on the first day of trial. The tags can be adhesive or stapled on.

20. Counsel must consult with each other and with the deputy clerk at the end of each trial day and compare notes as to which exhibits are in evidence and any limitations thereon. If there are any differences, counsel should bring them promptly to the Court’s attention.

21. In addition to the record copies of exhibits, one or more bench binders containing a copy of each side’s exhibits must be provided to the Court on the first day of trial. Each exhibit must be separated with a label divider (an exhibit tag is unnecessary for the bench set). Please use 1-1/2-inch binders with

1 locking rings. (Heavier binders are too hard to handle.)

2 22. At the close of evidence, counsel shall jointly provide a revised list of all exhibits actually in
3 evidence (and no others) stating the exhibit number and a brief, non-argumentative description (*e.g.*, letter
4 from A. B. Case to D. E. Frank, dated August 17,1999).

5 **OBJECTIONS**

6 23. Counsel shall stand when making objections. State the legal basis only. Speak up promptly.

7 24. There can only be one lawyer per witness per party for all purposes, including objections.

8 **TIME LIMITS**

9 25. Ordinarily, the Court shall set fixed time limits at the final pretrial conference. All of your
10 examination time (whether direct, cross, re-direct or re-cross) for all witnesses must fit within your time limit
11 and you may allocate it as you wish. Opening and closing time limits shall be separately considered.
12 Counsel must keep track of everyone's usage. At the end of each day, counsel must confer over the time
13 used and the time remaining for all parties and advise the Court daily. The Court will also try to keep track.

14 **SETTLEMENTS AND CONTINUANCES**

15 26. Shortly before trial or a final pretrial conference, counsel occasionally wish jointly to advise the
16 clerk that a settlement has been reached and seek to take the setting off calendar but it turns out later that
17 there was only a settlement "in principle" and disputes remain. Cases, however, cannot be taken off
18 calendar in this manner. Unless and until a stipulated dismissal or judgment is filed or placed on the record,
19 all parties must be prepared to proceed with the final pretrial conference as scheduled and to proceed to
20 trial on the trial date, on pain of dismissal of the case for lack of prosecution or default judgment. Only an
21 advance continuance expressly approved by the Court will release counsel and the parties from their
22 obligation to proceed. If counsel expect that a settlement will be final by the time of trial or the final pretrial
23 conference, they should notify the Court immediately in writing or, if it occurs over the weekend before the
24 trial or conference, by voice mail to the deputy courtroom clerk. The Court will attempt to confer with
25 counsel as promptly as
26 circumstances permit to determine if a continuance will be in order. Pending such a conference, however,
27 counsel must prepare and make all filings and be prepared to proceed with the trial.

28 **CHANGE OF TRIAL DATE**

1 27. Because of scheduling conflicts with other cases on the docket, the Court retains the discretion
2 to change the trial date, either by way of ADVANCEMENT or continuance. In the event the trial date is
3 changed, the parties may seek adjustment of the time limits for compliance with the requirements of this
4 order, which shall be effective only upon Court approval.

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6 **IT IS SO ORDERED.**

7 Dated: May 17, 2002

_____/s/_____
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9 CHARLES R. BREYER

10 UNITED STATES DISTRICT JUDGE
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